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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85497; File No. SR-NYSEAMER-2019-08]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 928NY to Reduce the Minimum Allowable Parameter for the Percentage-Based Risk Limitation Mechanism

April 3, 2019

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 22, 2019, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 928NY (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the percentage-based Risk Limitation Mechanism. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 928NY (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the percentage-based Risk Limitation Mechanism.

Risk Limitation Mechanisms

Rule 928NY sets forth the risk-limitation system, which is designed to help Market Makers, as well as ATP Holders, better manage risk related to quoting and submitting orders, respectively, during periods of increased and significant trading activity.<sup>4</sup> The Exchange requires Market Makers to utilize a risk limitation mechanism for quotes, which automatically removes a Market Maker's quotes in all series of an options class when certain parameter settings are breached.<sup>5</sup> The Exchange permits, but does not require, ATP Holders to utilize its risk limitation mechanism for orders, which automatically cancels such orders when certain parameter settings

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<sup>4</sup> Market Makers are included in the definition of ATP Holders and therefore, unless the Exchange is discussing the quoting activity of Market Makers, the Exchange does not distinguish Market Makers from ATP Holders when discussing the risk limitation mechanisms. See Rule 900.2NY(5) (defining ATP Holder as "a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP," and requires that "[a]n ATP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934"). See also Rule 900.2NY(38) (providing that a Market Maker is "an ATP Holder that acts as a Market Maker pursuant to Rule 920NY").

<sup>5</sup> See Rule 928NY, Commentary .04(a) (providing that Market Makers are required to utilize one of the three risk settings for their quotes); and Commentary .01 (regarding the cancellation of quotes once the risk settings have been breached).

are breached.<sup>6</sup>

Pursuant to Rule 928NY, the Exchange establishes a time period during which the System calculates for quotes and orders, respectively: (1) the number of trades executed by the Market Maker or ATP Holder in a particular options class (“transaction-based”); (2) the volume of contracts traded by the Market Maker or ATP Holder in a particular options class (“volume-based”); or (3) the aggregate percentage of the Market Maker’s quoted size or ATP Holder’s order size(s) executed in a particular options class (“percentage-based”) (collectively, the “risk settings”).<sup>7</sup> If a risk setting is triggered, the System will cancel all of the Market Maker’s quotes or the ATP Holder’s open orders in that class until the Market Maker or ATP Holder notifies the Exchange it will resume submitting quotes or orders.<sup>8</sup> The temporary suspension of quotes or orders from the market that results when the risk settings are triggered is meant to operate as a safety valve that enables Market Makers and/or ATP Holders to re-evaluate their positions before requesting to re-enter the market.

#### Proposed Change to Minimum Parameter for Percentage-Based Risk Setting

Per Commentary .03 to Rule 928NY, the Exchange establishes outside allowable parameters for each risk setting and announces by Trader Update “any applicable minimum, maximum and/or default settings for the Risk Limitation Mechanisms” that are at or within these

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<sup>6</sup> See Rule 928NY, Commentary .04(b) (providing that ATP Holders may avail themselves of one of the three risk limitation mechanisms for certain of their orders) and Commentary .01 (regarding the cancellation of orders once the risk settings have been breached).

<sup>7</sup> See Rule 928NY(b)-(d) (setting forth the three risk limitation mechanisms available). A Market Maker may activate one Risk Limitation Mechanism for its quotes (which is required) and a different Risk Limitation Mechanism for its orders (which is optional), even if both are activated for the same class. See also Commentary .08 to Rule 928NY.

<sup>8</sup> See Commentaries .01 and .02 to Rule 928NY (requiring that a Market Maker or ATP Holder request that it be re-enabled after a breach of its risk settings).

outside parameters. ATP Holders, in turn, adjust their own risk settings within the Exchange-established parameters, based on risk tolerance, taking into account such factors as present and anticipated market conditions, news in an option, and/or sudden change in volatility of an option. Put another way, the rule sets forth the minimum/maximum for each risk setting and the Exchange may, but does not have to, use these settings. However, the Exchange may instead choose settings that are higher than the minimum and lower than the maximum settings (i.e., if the rule allows a minimum of 1 and a maximum of 10, the Exchange could use these parameters or could instead establish a minimum of 3 and a maximum of 7). Once the Exchange determines and announces the applicable parameters for each risk setting, the ATP Holder, in turn, selects a setting within the Exchange announced parameters that suits their risk tolerance (i.e., assuming the Exchange selected a minimum of 3 and a maximum of 7, the ATP Holder may select a setting of 3, 4, 5, 6 or 7).

The Exchange proposes to adjust the minimum allowable parameter as established by Rule for the percentage-based risk setting from 100 percent to 1 percent (the “Minimum Parameter”).<sup>9</sup> The following illustrates the potential impact of the Exchange setting the reducing the minimum threshold from 100 percent to 1 percent:

If a market participant has interest in two series of the same underlying, A and B, for 10 contracts each, the participant uses the percentage-based risk setting, and the exposure risk is set to 100 percent, an execution in series A for 10 contracts will result in the interest in series B being canceled. However, if the execution in series A is for 9 contracts (as opposed to 10), the interest in series B would not be

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<sup>9</sup> See proposed Commentary .03 to Rule 928NY. The manner in which Rule 928NY operates is not being amended in this rule change.

cancelled. If there is a subsequent execution within the time period<sup>10</sup> in series B for any number of contracts or for the remaining contract in series A, the remaining interest in series A and B will be canceled.

If the same facts as above, but instead, the participant's exposure risk is set to 1 percent (as opposed to 100 percent), an execution in series A for any number of contracts, will result in the remaining interest in series A and B being canceled.

As indicated above, the proposed reduction of the Minimum Parameter was specifically requested by some ATP Holders and would inure to their benefit as it would allow the Exchange to offer more sensitive risk controls. The Exchange notes that it is not modifying the maximum threshold for the percentage-based setting, which provides ATP Holders, and Market Makers in particular, the ability to more finely calibrate their risk exposure. The Exchange has not modified this Minimum Parameter since implementing the risk settings in 2012.<sup>11</sup> The Exchange believes a modification to the Minimum Parameter would account for increased market volatility and fragmentation, as well as the ever-increasing automation, speed and volume transacted in today's electronic trading environment. In this regard, this proposed change would provide the Exchange with more flexibility within which to establish the lower bound risk parameter for ATP Holders that use this risk setting. To the extent this flexibility is utilized, the Exchange believes this

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<sup>10</sup> See Commentary .03 to Rule 928NY (providing that the Exchange will specify via Trader Update "any applicable time period(s) for the Risk Limitation Mechanisms; provided, however, that the Exchange will not specify a time period of less than 100 milliseconds").

<sup>11</sup> See Securities Exchange Act Release No. 67713 (August 22, 2012), 77 FR 52090 (August 28, 2012) (SR-NYSEMKT-2012-39). In 2016, the Exchange modified only the upper bound of the percentage-based (as well as the upper bound of the volume-based) risk setting. At that time, the Exchange also modified both the upper and lower bound of the transaction-based setting. See Securities Exchange Act Release No. 79468 (December 5, 2016), 81 FR 89160 (December 9, 2016) (SR-NYSEMKT-2016-110).

should afford such ATP Holders the ability to better calibrate and manage risk.<sup>12</sup>

### Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

ATP Holders are vulnerable to the risk from a system or other error or a market event that may cause them to send a large number of orders or receive multiple, automatic executions before they can adjust their exposure in the market. Without adequate risk management tools, such as the available risk settings, ATP Holders may opt to reduce the amount of order flow and liquidity that they provide to the market, which could undermine the quality of the markets available to market participants. The Exchange believes that the proposed Minimum Parameter, which setting has not been modified since it was adopted in 2012, removes impediments to and

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<sup>12</sup> The Exchange would still announce by Trader Update the actual minimum setting for the percentage-based risk setting, which may be the same as or greater than the Minimum Parameter (but no greater than the maximum allowable percentage-based setting). See Commentary .03 to Rule 928NY.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

perfects the mechanism of a free and open market by providing the Exchange with more flexibility within which to establish the appropriate lower bound of the percentage-based setting, in consideration of market conditions, which would enable this risk setting to operate in the manner intended to the benefit of all market participants. To the extent this flexibility is utilized, the Exchange believes this should afford ATP Holders that utilize this risk setting the ability to better calibrate and manage risk.

Further, this proposed change, which was specifically requested by some ATP Holders, would remove impediments to and perfect the mechanism of a free and open market because it would be available to all ATP Holders (if the Exchange chooses to reduce the Minimum Parameter to one percent) and may encourage more ATP Holders to utilize the percentage-based risk setting, specifically, or the risk settings generally, which would benefit of all market participants. The Exchange believes this proposal has the potential to help ATP Holders better manage their risk as it would allow for more precise customization of their risk settings which would, in turn, help ATP Holders avoid trading a number of contracts that exceeds the ATP Holder's risk tolerance level.

The Exchange notes that other options exchanges offer risk settings for quotes and orders, including analogous percentage-based settings, consistent with the proposed Minimum Parameter. For example, Rule 21.16, Risk Monitor Mechanism, on both Cboe BZX Exchange, Inc. ("BZX") and Cboe EDGX Exchange, Inc. ("EDGX") states that each BZX or EDGX Member may (but is not required to) configure a single counting program or multiple counting programs to govern its trading activity (i.e., on a per port basis).<sup>15</sup> Just as with Exchange's [sic]

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<sup>15</sup> See BZX and EDGX Rule 21.16(a)(i)-(iv) (providing optional risk settings). On each market (BZX and EDGX), risk setting limits have been reached [sic], the Risk Monitor Mechanism cancels or rejects such Member's orders or quotes in all underlying securities

percentage-based risk setting, BZX/EDGX offer a risk setting that is based on a percentage-based trigger, measured against the number of contracts executed as a percentage of the number of contracts outstanding within a time period designated by the Exchange (“percentage trigger”).<sup>16</sup> This percentage trigger is calculated similarly to the risk setting on the Exchange: the BZX/EDGX counting program first calculates, for each series of an option class, the percentage of a BZX/EDGX Member’s order size in the specified class or a the [sic] percentage of BZX/EDGX Member that is a market maker’s quote size in the appointed class that is executed on each side of the market, including both displayed and non-displayed size; the counting program then sums the overall series percentages for the entire option class to calculate the percentage trigger. Unlike the Exchange’s rule, BZX/EDGX Rule 21.16 has no minimum equivalent, which the Exchange understands means that the risk setting established by the Member for its trading activity (whether orders or market maker quotes) may be set as low as 1 percent. And unlike the Exchange, BZX/EDGX do not require its market makers to establish risk settings for quotes, nor does it impose a default setting for participants that do not establish such risk settings. As proposed, the Minimum Parameter would authorize the Exchange to allow the percentage-based trigger to be as low as 1 percent, which would thus allow the Exchange’s rule to operate more similarly to the BZX/EDGX rule.<sup>17</sup> The Exchange believes that this proposal is

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and cancels or rejects any additional orders or quotes. See BZX and EDGX Rule 21.16(b)(i)-(iii).

<sup>16</sup> See BZX and EDGX Rule 21.16(a)(iv) (setting forth percent trigger risk setting).

<sup>17</sup> The Exchange notes that other options in [sic] exchanges in the Cboe family offer a similar Risk Monitor Mechanism. See, e.g., Cboe C2 Exchange, Inc. (“C2”) Rule 6.14(c)(5)(A)(i)-(v) (setting forth risk settings, with paragraph (iv) setting forth the percentage-based setting, each of which mirror those offered by BZX and EDGX). See also Securities Exchange Act Release No. 84778 (December 10, 2018) (SR-CboeEDGX-2018-058) (immediately effective EDGX filing to harmonize risk mechanism to that of its affiliated exchange, C2).



consistent with the BXZ/EDGX rules that allow order senders (i.e., including non-Market Makers) to use a percentage-based risk parameter that may be set as low as 1 percent.

The Exchange also notes that two non-Cboe affiliated options exchanges likewise offer similar percentage-based risk settings that apply solely to quotes. Specifically, Miami International Exchange LLC (“MIAX”) Rule 612(a) requires its market makers to establish a risk settings [sic] for quotes in its appointment (as does the Exchange). MIAX’s percentage-based risk setting operates similar to the Exchange’s analogous setting. However, MIAX does not provide a minimum Allowable Engagement Percentage (“AEP”); market makers are free to pick any AEP (effectively allowing them to set a threshold as low as 1 percent). If a MIAX market maker does not establish an AEP, MIAX will impose a default minimum of 100 percent. In addition, Nasdaq PHLX (“PHLX”) -- like the Exchange and MIAX -- also requires its market makers to utilize one of its risk settings (either volume-based or percentage-based) for quotes. PHLX’s percentage-based risk setting operates similar to the Exchange’s analogous setting. Further, PHLX Rule 1099(c)(2)(A) provides that market makers that opt to utilize PHLX’s percentage-based risk setting may establish a minimum threshold (i.e., a “Specified Percentage”) of no lower than 1 percent.<sup>18</sup> The Exchange believes that this proposal is consistent with the MIAX and PHLX rules that require market makers on those exchanges to use a percentage-based risk parameter that may be set as low as 1 percent (and, in the case of MIAX, a default setting

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<sup>18</sup> The Exchange notes that MIAX cited to the BZX rule when it filed an immediately effective proposed rule change to change its AEP setting from 100 percent to any percentage established by the market maker (i.e., no minimum parameter). See Securities Exchange Act Release No. 77817 (May 12, 2016), 81 FR 31286 (May 18, 2016) (SR-MIAX-2016-10). See also [sic] See Securities Exchange Act Release No. 78129 (June 22, 2016), 81 FR 42024 (June 28, 2016)) (SR-Phlx-2016-67) (immediately effective rule filing, citing MIAX AEP, to modify its analogous percentage-based risk setting to establish the minimum Specified Percentage determined by a market maker at not less than 1 percent).

will be imposed if the market maker fails to select one).

Finally, the Exchange also believes that the proposed rule change would promote just and equitable principles of trade because Market Makers have the option to select one of three risk settings for quotes and non-Market Makers have this same option or may choose to utilize no risk settings at all. Thus, this proposal merely provides the Exchange additional latitude in establishing the percentage-based risk setting and may encourage more ATP Holders to utilize this or the other two risk settings, which benefits all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is proposing a Minimum Parameter that would provide the Exchange will greater flexibility in establishing the appropriate lower bound of the percentage-based setting, which may in turn provide ATP Holders that utilize this setting with greater control and flexibility over setting their risk tolerance and, potentially, more protection over risk exposure. The proposal is structured to offer the same enhancement to all ATP Holders, regardless of size, and would not impose a competitive burden on any participant. The proposal may foster competition among Market Makers by providing them with the ability to enhance and customize their percentage in order to compete for executions and order flow.

The Exchange does not believe that the proposed enhancement to the existing risk limitation mechanism would impose a burden on competing options exchanges. Rather, it provides ATP Holders with the opportunity to avail themselves of risk settings for quotes and

orders that are consistent with such tools currently available on BZX, EDGX, MIAX and PHLX.<sup>19</sup>

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>22</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>23</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. As noted above, the proposed operational functionality is substantially similar to those

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<sup>19</sup> See supra notes 15-18.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii).

utilized on other options exchanges,<sup>24</sup> and the differences noted herein do not raise substantive or novel issues. Waiver of the operative delay would allow the Exchange to immediately implement the proposed functionality in coordination with the availability of the technology supporting the proposal, permitting ATP Holders to utilize the optional risk settings without undue delay. Thus the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>25</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or

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<sup>24</sup> See supra notes 14-17.

<sup>25</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2019-08 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2019-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSEAMER-2019-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).

